

IN THE IOWA DISTRICT COURT FOR FRANKLIN COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

JERRY PASSEHL,

Defendant.

LAW NO. _____

**Filed with
Franklin County Clerk of Court
on 12/27/10**

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (“IDNR”) and for its claim against Defendant Jerry Passehl states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Jerry Passehl for failure to comply with Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01; failure to maintain separate tire piles for “waste tires” and “used tires”; failure to provide receipts documenting proper disposal of appliances; operating without a National Pollutant Discharge Elimination System (“NPDES”) permit; failure to implement a Storm Water Pollution Prevention Plan (“SP3”); and failure to notify the Department of Natural Resources (“IDNR”) of a hazardous condition.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The Iowa Department of Natural Resources (“IDNR”) is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Jerry Passehl owns and operates "The Junkyard," a salvage yard located at 513 160th St, Latimer, Iowa 50452.

Definitions

5. "Appliances" means "household and commercial devices such as refrigerators, freezers, kitchen ranges, air-conditioning units, dehumidifiers, gas water heaters, furnaces, clothes washers, clothes dryers, dishwashers, microwave ovens and commercial coolers with components containing mercury, refrigerants, or PCB-containing capacitors." 567 Iowa Admin. Code 118.3.

6. "Demanufacturing" means "the removal of components, including but not limited to PCB-containing capacitors, ballasts, mercury-containing components, fluorescent tubes, and refrigerants, from discarded appliances." 567 Iowa Admin. Code 118.3.

7. "Discarded" means "no longer to be used for the original intended purpose." 567 Iowa Admin. Code 118.3.

8. "Hazardous condition" means "any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment." Iowa Code § 455B.381(4); 567 Iowa Admin. Code 131.1.

9. "Hazardous substance" means "any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of

substances which, in sufficient quantity, may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents.” Iowa Code § 455B.381(5); 567 Iowa Admin. Code 131.1.

10. “Release” means “a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state . . .” Iowa Code § 455B.381(8).

11. “[S]torm water discharge associated with industrial activity” means “the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 567 Iowa Admin. Code 60.2. The term “industrial activity” includes “facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards.” 567 Iowa Admin. Code 60.2.

12. “Used tire” means “a tire that has previously been on a vehicle but that retains suitable tread depth and is free of damage or defects so that it may be safely returned to its original purpose.” 567 Iowa Admin. Code 117.2.

13. “Waste tire” means “a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. This definition shall include a tire mounted on a rim, but not on a vehicle.” 567 Iowa Admin. Code 117.2.

Jurisdiction

Solid Waste Regulations

14. The Environmental Protection Commission (“EPC”) of the IDNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1,

relative to the treatment and disposition of solid waste. Iowa Code § 455B.304. The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 100-123.

15. The director of the IDNR may issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1, or rules adopted pursuant to that part. Iowa Code § 455B.307(2).

16. All discarded appliances must be demanufactured before being disposed of or recycled. 567 Iowa Admin. Code 118.2(1).

17. A person must obtain an appliance demanufacturing permit ("ADP") from the Iowa Department of Natural Resources before conducting any demanufacturing activities. 567 Iowa Admin. Code 118.2(2).

18. Any person who violates any provision of Iowa Code section 455B, Division IV, Part 1, or any rule, order, or permit issued thereunder shall be subject to a civil penalty not to exceed Five Thousand and no/100 Dollars (\$ 5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

19. The Attorney General, at the request of the IDNR, may institute any legal proceeding necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code section 455B, Division IV, Part 1, or any order or rule issued under that part. Iowa Code § 455B.307(2).

Storm Water Discharge Regulations

20. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR. Iowa Code § 455B.186(1).

21. The IDNR is authorized to issue, modify, deny or revoke a general permit for storm water discharges required by Iowa Code chapters 455B, 459 or 459A. Iowa Code § 455B.103A(1).

22. The IDNR is authorized to issue National Pollutant Discharge Elimination System (“NPDES”) permits including but not limited to storm water discharge permits issued pursuant to Iowa Code section 455B.103A. Iowa Code § 455B.197.

23. The Iowa Environmental Protection Commission (“EPC”) has authority to adopt rules necessary to implement Iowa Code chapters 455B, 459, and 459A, relating to permits, conditional permits, and general permits. Iowa Code § 455B.105(11)(a). Specifically, the EPC has authority to adopt rules for applications or permits related to the NPDES, described in Iowa Code section 455B.197. Iowa Code § 455B.105(11)(c). Implementing rules are contained in 567 IAC 60-69.

24. The director of the IDNR is authorized to issue storm water discharge general permits for a class of facilities which could be described or conditioned by a single permit. Iowa Code § 455B.103A(1); 567 Iowa Admin. Code 64.4(2)(a)(1).

25. The IDNR has adopted a general permit for Storm Water Discharge Associated with Industrial Activity. 567 Iowa Admin. Code 64.15(1). “Storm water discharge associated with industrial activity” includes discharges from salvage yards. National Pollutant Discharge Elimination System (NPDES) General Permit No. 1, § VIII.

26. Any NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least one hundred and eighty (180) days prior to the expiration of the permit. 567 Iowa Admin. Code 64.8(1)(a).

27. A person who applies for a general NPDES permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee or a permit fee or both as specified in 567 Iowa Admin. Code 64.16(3). For NPDES General Permits Nos. 1, 2, 3 and 5, the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent for coverage is submitted. 567 Iowa Admin. Code 64.16(1).

28. The Annual Permit Fee for Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1, is One Hundred and Seventy Five and no/100 Dollars (\$175.00) per year. 567 Iowa Admin. Code 64.16(3)(b).

29. A Storm Water Pollution Prevention Plan ("SP3") shall be developed and completed for each facility subject to NPDES General Permit No. 1, § III. C.

30. The facility must implement the provisions of the SP3 as a condition of the permit. NPDES General Permit No. 1, § III. C.

31. Section M of the SP3 for the Defendant contains the following requirements:

- a. Vehicles entering the scrap yard will be inspected for the presence of fluids, including fuel, antifreeze, and oil, and air conditioning refrigerants, and, if the vehicles contain any of the aforementioned materials, must be properly drained or evacuated.
- b. No vehicles will be crushed prior to removal of fluids; any fluids that accumulate from the crushing of vehicles will be properly collected in a containment area; and the fluids located in the containment area will be removed and properly stored/managed at the end of each day when the crusher is used.
- c. Batteries shall be removed from vehicles within one day of receipt, stored outdoors on a pallet and covered with a tarp.

32. Section N of the SP3 for the Defendant contains the following requirements:

- a. Yard equipment is to be inspected frequently and repaired as soon as possible.
- b. Fluids accumulating in the crusher containment area will be removed and properly stored/managed at the end of each day when the crusher is used.

- c. All spills will be cleaned up immediately, and the DNR shall be notified in the event of an accidental release that will create a hazardous condition.
- 33. Section O of the SP3 for the Defendant contains the following requirements:
 - a. Each year a short written report will be prepared to recap the previous year's storm water management activities, problems, and successes.
 - b. The annual report must be signed by an authorized representative of the facility and kept with the SP3 for at least three (3) years.
- 34. Any noncompliance with the permit is grounds for an enforcement action.

NPDES General Permit No. 1, § VI. A.

35. The enforcement provisions of Iowa Code chapter 455B, division III, part 1, of Iowa Code chapter 455B, apply to general permits for storm water discharge. Iowa Code § 455B.103A(5).

36. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand and no/100 Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

37. The Attorney General shall, at the request of the director with approval of the EPC, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(5).

Hazardous Condition Regulations

38. The IDNR shall be the agency of the State to prevent, abate, and control the exposure of the citizens of the State to hazardous conditions. Iowa Code § 455B.382.

39. The IDNR is authorized to establish such rules as are necessary to protect the public from unnecessary exposure to hazardous substances, and to develop comprehensive plans for the prevention, abatement and control of hazardous conditions within the state. Iowa Code §§ 455B.383(1)-(2).

40. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. Iowa Code § 455B.386; 567 Iowa Admin. Code 131.2.

41. A person violating Iowa Code section 455B.386 shall be subject to a civil penalty of not more than One Thousand and no/100 Dollars (\$1,000.00). Iowa Code § 455B.386.

42. The Attorney General shall, at the request of the IDNR, institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this part 4 of division IV. Iowa Code § 455B.391(1).

Administrative Penalty Provisions

43. The Environmental Protection Commission (“EPC”) shall establish a schedule or range of civil penalties, which may be administratively assessed. Iowa Code § 455B.109(1).

44. Administrative penalties shall be assessed through the issuance of an administrative order by the director of the IDNR for an amount not to exceed Ten Thousand and no/100 Dollars (\$10,000.00). 567 Iowa Admin. Code 10.3.

45. A person who fails to timely pay a penalty assessed by a final order of the IDNR shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the

assessed penalty for each month or part of a month that the penalty remains unpaid. Iowa Code § 455B.109(4).

Facts

46. On June 12, 2003, the Iowa Department of Natural Resources (“IDNR”) inspected Defendant’s property to observe compliance with state environmental laws. During the inspection, the Defendant informed the IDNR that he accepts appliances and sent them to his salvage yard. The IDNR informed the Defendant that the appliances must be demanufactured prior to disposal, and no person shall demanufacture appliances without obtaining an Appliance Demanufacturing Permit (ADP). The IDNR also observed car batteries that were improperly stored.

47. On June 18, 2003, the IDNR issued a Notice of Violation (“NOV”) to the Defendant for the violations observed during the June 12, 2003 inspection. The letter noted that the Defendant was disposing of appliances without properly demanufacturing them first and informed the Defendant that he must immediately cease accepting appliances until the Defendant obtains an ADP. The IDNR informed the Defendant that he needs to put a cover over the plastic container housing car batteries. The IDNR also required the Defendant to obtain a storm water permit because the Defendant was engaged in scrap recycling and storage activities.

48. On September 25, 2003, the IDNR inspected Defendant’s property to observe compliance with state environmental laws. During the inspection, the IDNR observed large piles of tires located at numerous locations on site. The IDNR estimated that the Defendant was storing approximately 1,500 waste tires. The Defendant was informed in a subsequent letter from the IDNR, dated October 3, 2003, that he was not allowed to store more than 500 waste tires on site and needed to remove some tires in order to comply with the law. The letter also

reminded the Defendant that he must obtain a storm water discharge permit because he was engaged in scrap recycling and storage activities and gave him one (1) month to submit an application.

49. On March 8, 2004, the IDNR issued the Defendant a NOV for failing to obtain a storm water discharge permit. The letter gave the Defendant one (1) month to obtain the permit before the IDNR would refer the Defendant to IDNR's legal section.

50. On April 8, 2004, the Defendant submitted an application for a storm water discharge permit.

51. On April 8, 2004, the IDNR issued Defendant NPDES General Permit No. 1, which would expire on April 8, 2005.

52. On July 8, 2004, the IDNR inspected the Defendant's property to observe compliance with environmental laws. While on site, the IDNR observed numerous oil-stained areas around the property, and the soils located underneath the car crusher were contaminated with pooled oil. The IDNR informed the Defendant that he needed to clean up the contaminated soil and dispose of it at a landfill. The IDNR also informed the Defendant that he must keep all landfill receipts for the disposal of the contaminated soil, and that the IDNR would be back to determine whether the Defendant had complied. Because of extensive vegetative cover, the IDNR was unable to observe the number of tires located on the Defendant's property to determine if he had complied with the IDNR's prior request.

53. On July 9, 2004, the IDNR issued a NOV to the Defendant for the violations observed during the July 8, 2004 inspection. The NOV informed the Defendant that the IDNR observed several instances of oil-contaminated soils on the Defendant's property and that the Defendant must clean up the contaminated soil to "sight and smell" and properly dispose of the

soil at a sanitary landfill and submit receipts documenting proper disposal. The IDNR also informed the Defendant that he must complete a Storm Water Pollution Prevention Plan ("SP3") as part of his storm water discharge permit.

54. On May 16, 2005, the IDNR issued Defendant a revised discharge authorization for NPDES General Permit No. 1, which would expire on April 8, 2008.

55. On March 24, 2006, the IDNR inspected the Defendant's property to observe compliance with environmental laws. During the inspection, the IDNR observed several locations of oil-contaminated soils. Defendant was ordered to clean up and properly dispose of the contaminated soil and keep landfill receipts as proof of proper disposal. The IDNR also observed that Defendant's Storm Water Pollution Prevention Plan ("SP3") was incomplete. The SP3 only contained a site map. The IDNR required the Defendant to complete an SP3 in compliance with Part III of Defendant's NPDES General Permit No. 1.

56. On April 4, 2006, the IDNR issued a NOV to the Defendant for the violations observed during the March 24, 2006 inspection. The letter stated that the IDNR had observed several locations of oil-contaminated soil and required the Defendant to clean up the soil and keep receipts documenting proper disposal of the soil. The letter also required the Defendant to complete a SP3 as part of his NPDES permit.

57. On April 17, 2007, the IDNR inspected the Defendant's property to observe compliance with environmental laws. During the inspection, the IDNR observed several small oil spills on the driveway as well as fluids on the bare ground. The IDNR also observed several appliances located on the property, and the IDNR informed the Defendant that the appliances must be taken to a permitted appliance demanufacturer prior to disposal. The IDNR observed tires on site and the Defendant estimated that he had 500 to 600 tires. During the inspection, the

IDNR also observed several deficiencies with the Defendant's compliance with his NPDES General Permit No. 1. The IDNR noted that the Defendant had not completed an SP3. The IDNR also noted that because the Defendant had more than 250 vehicles on site, the Defendant was required to conduct storm water sampling.

58. On April 25, 2007, the IDNR issued the Defendant a NOV summarizing the IDNR's observations from the April 17, 2007, inspection. The letter required the Defendant to: 1) excavate contaminated soil to sight and smell, and dispose of said soil at the landfill; 2) properly dispose of any discarded appliances; 3) obtain a waste tire stockpile permit or reduce the passenger tire equivalents below 500; 4) complete an SP3; and 5) conduct annual storm water sampling.

59. On August 6, 2007, the IDNR conducted an inspection of Defendant's property to determine compliance with environmental laws. The IDNR observed that the Defendant had not complied with any of the requirements contained in the IDNR's April 25, 2007, letter. The IDNR observed numerous oil spills and other fluids located on the ground. Several appliances, including air conditioners, washers and dryers, were observed on the premises and had not been demandufactured. The IDNR noted that the Defendant had not reduced the number of waste tires located on site, as the Defendant estimated he still had 500 to 600 waste tires. The Defendant also had not completed an SP3.

60. Defendant's NPDES General Permit No. 1 expired on April 8, 2008. As of the time of filing of this Petition, Defendant has not obtained another storm water discharge permit. Defendant did not pay the Annual Permit Fee for NPDES General Permit No. 1 on April 8, 2008, which was One Hundred and Seventy-Five Dollars (\$175.00).

61. On July 11, 2008, the IDNR issued the Defendant a NOV for failing to renew Defendant's NPDES General Permit No. 1. The letter required the Defendant to either renew his NPDES permit or cease operations and file a notice of discontinuation with the IDNR.

62. On January 22, 2009, Defendant Jerry Passehl entered into Administrative Consent Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01 ("Order"), with the IDNR to resolve allegations of numerous violations of various environmental protection regulations. The Order required Defendant to do the following: 1) excavate any and all remaining contaminated soil around both car crushers and dispose of it in a sanitary landfill and submit disposal receipts proving he has done so within thirty (30) days of the Order; 2) properly dispose of all discarded appliances at his property at an approved landfill or recycling center, submit receipts to prove he has done so within thirty (30) days of the Order, and refrain from accepting any appliances in the future unless he obtains an Appliance Demanufacturing Permit ("ADP"); 3) store no more than 500 passenger tire equivalents on his property unless he obtains a waste tire stockpile permit, and Defendant must maintain separate tire piles for "waste tires" and "used tires" for ease of volume assessment; and 4) pay an administrative penalty of Three Thousand Dollars (\$3,000.00) to the IDNR within sixty (60) days of the Order. A copy of the Order is attached hereto as Exhibit A, and by this reference incorporated herein.

63. On April 8, 2009, Defendant failed to pay the Annual Permit Fee for NPDES General Permit No. 1, which was One Hundred and Seventy-Five Dollars (\$175.00).

64. On April 14, 2009, the IDNR inspected Defendant's property to evaluate compliance with the Order. The IDNR observed the following: 1) the Defendant had failed to remove any of the contaminated soil located around the car crusher and could not produce receipts showing removal of other soils; 2) the Defendant had not obtained an ADP, but

numerous appliances were still located on the property; 3) the Defendant could not provide receipts showing waste tire removal, nor had the tires been organized into “waste” and “sellable” piles; and 4) the Defendant had not paid the administrative penalty.

65. On April 21, 2009, the IDNR sent the Defendant a Notice of Violation (“NOV”), outlining the violations observed during the April 14, 2009, site investigation. The NOV also reminded the Defendant that his NPDES General Permit No. 1 had expired and not been renewed.

66. On April 21, 2009, the IDNR also sent the Defendant a letter documenting a phone conversation that occurred on April 17, 2009. The letter extended the deadlines for compliance with the Order. The Defendant was given until May 5, 2009, to submit receipts showing proper disposal of all contaminated soil and solid waste from the property, and submit paperwork verifying the Defendant has renewed his NPDES General Permit No. 1. The Defendant was required to continue organizing the tire piles into usable and waste tires and removing tires in a timely fashion. The Defendant was required to enter into a payment plan for the administrative penalty by paying Five Hundred Dollars (\$500.00) to the IDNR by April 30, 2009, and then again on the 15th of each month thereafter, until the full balance of Three Thousand Dollars (\$3,000.00) was paid.

67. On May 5, 2009, the Defendant sent the State Three Hundred and Four Dollars and Ninety-Five Cents (\$304.95), as partial payment of the administrative penalty assessed by Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01.

68. On September 10, 2009, the Defendant paid One Hundred and Fifty Dollars (\$150.00), as partial payment of the Annual Permit Fee for NPDES General Permit No. 1, which was due on April 8, 2009.

69. On September 15, 2009, the Environmental Protection Commission ("EPC") had a meeting, where it was set to consider the enforcement action against the Defendant for referral to the Iowa Attorney General's Office. At the meeting, the Defendant provided the IDNR with four (4) photographs showing excavation activities near the new crusher on the property and a landfill receipt dated September 4, 2009, for the disposal of 220 lbs of contaminated soil.

70. On September 21, 2009, the IDNR inspected Defendant's property to evaluate compliance with the Order. The IDNR collected soil samples from around both crushers and the results showed a significant concentration of Motor Oil and Total Extractable Hydrocarbons ("TEH"). The sample result for both Motor Oil and TEH was 190,000 mg/kg. The IDNR noticed a strong oil odor evident throughout the property and observed sheen on several puddles on the property. The IDNR informed the Defendant that he would have to excavate the contaminated soil.

71. On November 10, 2009, the IDNR inspected the Defendant's property to evaluate compliance with the Order. The IDNR observed that the Defendant had not excavated and disposed of any contaminated soil since the previous visit. The IDNR also observed that he had not removed any more tires.

72. On April 8, 2010, Defendant failed to pay the Annual Permit Fee for NPDES General Permit No. 1, which was One Hundred and Seventy-Five Dollars (\$175.00).

73. On August 6, 2010, the IDNR inspected the Defendant's property to evaluate compliance with the Order. The IDNR observed that, despite two receipts for the proper disposal of petroleum-contaminated soil, the Defendant still had not excavated all the petroleum-contaminated soil. The Defendant informed the IDNR that he has discovered some appliances on his property when removing tires for disposal, but the Defendant could not produce receipts

to document the proper disposal of those appliances. The IDNR observed that the organization of the tires had not changed since their previous visit. The tires continued to be haphazardly strewn among junk cars and were overgrown with weeds, which made it difficult for the IDNR to determine whether the Defendant is making any progress on disposal of the tires. The IDNR observed several car batteries laying around in the dirt, exposed to the elements.

74. The IDNR also observed that the Defendant was not implementing many of the requirements contained in the facility's SP3. The IDNR observed significant amounts of oil around the crusher, which suggests that fluids are not being drained prior to crushing cars. The Defendant provided no documentation that demonstrated refrigerants are being properly removed prior to crushing. The IDNR observed fluids leaking around two (2) valves on the containment area of the crusher, which appeared to have been leaking for some time. The IDNR observed that a car hood had been placed upside down under the rear valve to capture the leaking fluid. The Defendant informed the IDNR that the crusher had last been used three (3) weeks ago, and the containment area on the crusher had a capacity of 400 gallons. During the inspection, the IDNR observed that the containment area was $\frac{3}{4}$ full. The Defendant's records revealed that there had been two (2) "significant" spills prior to the inspection, but the IDNR has no records of these spills. The Defendant's records did not contain any annual reports recapping the previous years' storm water management activities, problems and successes.

Violations

Solid Waste Regulations

75. The Defendant has failed to maintain separate tire piles for "waste tires" and "used tires" in violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01.

76. The Defendant has failed to provide receipts by May 5, 2009, showing proper disposal of all discarded appliances at his property at an approved landfill or recycling center in violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01.

Storm Water Discharge Violations

77. The Defendant has failed to comply with Section M of the SP3 in violation of NPDES General Permit No. 1, § III. C.

- a. The Defendant failed to properly drain or evacuate fluids from vehicles entering the scrap yard prior to their crushing.
- b. The Defendant failed to timely remove and properly maintain the containment area for fluids at the end of each day when the crusher was used.
- c. The Defendant failed to properly store batteries that were located on site.

78. The Defendant has failed to comply with Section N of the SP3 in violation of NPDES General Permit No. 1, § III. C.

- a. The Defendant failed to inspect and repair scrap yard equipment in a timely manner.
- b. The Defendant failed to immediately clean up any spills and notify the IDNR of the spills.

79. The Defendant has failed to comply with Section O of the SP3 in violation of NPDES General Permit No. 1, § III. C.

- a. The Defendant failed to prepare an annual report summarizing the previous years' storm water management activities, problems, and successes.

80. The Defendant failed to timely apply for renewal of its NPDES permit within the proper time frame in violation of 567 Iowa Admin. Code 64.8(1).

81. The Defendant has failed to pay the remaining balance of Annual Permit Fees for NPDES General Permit No. 1 since April 8, 2008, totaling Three Hundred and Seventy-Five and

no/100 Dollars (\$375.00) in violation of 567 Iowa Admin. Code 64.16(3)(b).

Hazardous Condition Violations

82. The Defendant failed to properly remove and dispose of all contaminated soil by May 5, 2009 in violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01.

83. The Defendant failed to notify the IDNR of the occurrence of a hazardous condition within six hours after the onset of the hazardous condition or discovery of the hazardous condition in violation of Iowa Code section 455B.386 and 567 Iowa Admin. Code 131.2.

Administrative Penalty

84. Defendant Jerry Passehl has only paid Three Hundred and Four Dollars and Ninety-Five Cents (\$304.95) of the Three Thousand Dollar (\$3,000.00) administrative penalty in violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01.

85. The Defendant has not paid any accumulated interest on the unpaid penalty in violation of Iowa Code section 455B.109(4).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Jerry Passehl, pursuant to Iowa Code section 455B.307(3) for each day of violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01, not to exceed Five Thousand Dollars (\$5,000.00) for each such violation;
- b. assess a civil penalty against Defendant Jerry Passehl, pursuant to Iowa Code section 455B.191(2) for each day of violation of 567 Iowa Admin. Code 64.8(1), Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01, and NPDES General Permit No. 1, not to exceed Five Thousand Dollars (\$5,000.00) for each such violation;

- c. assess a civil penalty against Defendant Jerry Passehl, pursuant to Iowa Code section 455B.386 for each violation of Iowa Code section 455B.386 and 567 Iowa Admin. Code 131.2, not to exceed One Thousand Dollars (\$1,000.00) for each such violation;
- d. issue a permanent injunction, pursuant to Iowa Code section 455B.307(3), enjoining Defendant Jerry Passehl from any violation of Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01;
- e. issue a permanent injunction, pursuant to Iowa Code section 455B.191(5), enjoining Defendant Jerry Passehl from any violation of 567 Iowa Admin. Code 64.8(1), Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01, and NPDES General Permit No. 1;
- f. issue a permanent injunction, pursuant to Iowa Code section 455B.391(1), enjoining Defendant Jerry Passehl from any violation of Iowa Code section 455B.386, 567 Iowa Admin. Code 131.2, and Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01;
- g. enter an order that the Defendant Jerry Passehl pay the NPDES General Permit No. 1 annual permit fees that are due, pursuant to 567 Iowa Admin. Code 64.16(3)(b); and
- h. enter an order that the Defendant Jerry Passehl pay the remaining balance on the administrative penalty assessed in Administrative Order Nos. 2009-SW-01, 2009-WW-01, and 2009-HC-01 and accrued interest, pursuant to Iowa Code section 455B.109(4).

Plaintiff further requests that the Court tax the costs of this action to the Defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Jerry Passehl
513 160th Street
Latimer, IA 50452

ADMINISTRATIVE CONSENT ORDER

2009-SW- 01

2009-WW- 01

2009-HC- 01

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Mr. Jerry Passehl have entered the following Administrative Consent Order (Order). Mr. Passehl agrees to properly dispose of contaminated soil located around both of his car crushers; remove all appliances from his property unless he obtains an appliance disposal permit; maintain the number of stored tires at 500 or below unless he obtains a waste tire stockpile permit; and pay an administrative penalty of \$3,000 to the order of the Iowa Department of Natural Resources. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Hopper and Michelle Johnson
Iowa Dept. of Natural Resources, FO#2
2300 15th Street S.W., PO Box 1443
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Relating to legal requirements:

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II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III (water quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part I (solid waste) and Part IV (hazardous condition), and the rules adopted pursuant to those parts; and Iowa Code section 455B.109 and Department rules in Chapter 567 Iowa Administrative Code (I.A.C.) 10 which authorize the Director to assess administrative penalties up to \$10,000.

PENGAD - BYRON, N. J.
EXHIBIT A

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III. STATEMENT OF FACTS

Mr. Passehl does not admit the allegations contained herein:

1. Mr. Passehl owns various properties in Franklin County, to include a salvage yard at 513 160th Street, Latimer, Iowa, 50452.
2. While investigating a yard fire at the site on June 13, 2003, Field Office (FO) #2 noted several violations and, accordingly, Mr. Passehl was issued a Notice of Violation (NOV) on June 18, 2003. This NOV required him to remove and properly dispose of contaminated soil; remove all appliances and stop accepting new appliances until he obtains an Appliance Demanufacturing Permit (ADP); and acquire a storm water NPDES General Permit No. 1 – which requires drafting a storm water Pollution Prevent Plan (PPP).
3. Mr. Passehl's salvage yard was visited by FO#2 personnel on September 25, 2003 to verify compliance with the June NOV's requirements. This visit was documented in a letter dated October 3, 2003. At this time he had not complied with the NOV.
4. Mr. Passehl applied for a storm water NPDES General Permit No. 1 in April 2004; its coverage extended until April 2005. It was renewed in May 2005, with coverage through April 2008.
5. On July 6, 2004 FO#2 received a complaint from the local sheriff office that Mr. Passehl's salvage yard had extensive oil contamination. FO#2 investigated on July 8, 2004 and noted several oil slicks along the property's access road, driveway, as well as gross contamination (pooled oil) beneath the car crusher. When FO#2 asked to see Mr. Passehl's PPP, he was unable to present it. As such, Mr. Passehl was issued a second NOV on July 9, 2004 for the oil contamination and for having an incomplete PPP. Additionally, FO#2's field notes from the July 8, 2004 visit noted that vegetation coverage made it impossible to estimate the number of tires on site, but that it appeared a large number were present. Mr. Passehl was informed of the 500 tire limit unless in possession of waste tire stockpile permit.
6. FO#2 visited Mr. Passehl's salvage yard to conduct a routine compliance inspection on March 24, 2006. This resulted in the issuance of a third NOV for oil contamination along the property's access road, driveway, and around the car crusher, as well as for having a still-incomplete PPP. Mr. Passehl was ordered to remedy these issues by July 2006.
7. Mr. Passehl was issued his fourth NOV on April 25, 2007 – again for oil contamination on the access road, driveway, and beneath and around the car crusher, the failure to have a completed PPP, and the failure to have an ADP and waste tire stockpile permit.
8. FO#2 inspected Mr. Passehl's property for compliance with the April NOV on August 6, 2007. Mr. Passehl had failed to comply with any of the NOV's requirements. Several oil

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9. spills remained on site. Pools of antifreeze, hydraulic fluids, and other unidentifiable contaminants were also noted on the ground. The PPP was still incomplete, and appliances (to include air conditioners, washers, and dryers)) were on site without the authorization of an ADP.
10. Mr. Passehl was informed in his fifth NOV dated August 20, 2007 that this case was being referred to the Department's Legal Services Bureau for enforcement action.

IV. CONCLUSIONS OF LAW

Mr. Passehl does not admit the following conclusions of law:

1. Iowa Code chapter 455B, Division IV, Part 4 (sections 455B.381 – 455B.399) establishes the Hazardous Condition program. The purpose of the program is to "prevent, abate, and control the exposure of the citizens of the state to hazardous conditions" IOWA CODE § 455B.382.
2. A hazardous condition is created based upon the "actual, imminent, or probable spilling, leaking or release" of a "hazardous substance" into the environment" IOWA CODE § 455B.381(4); 567 I.A.C. 131.1.
3. A "hazardous substance" means "any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant" IOWA CODE § 455B.381. "[I]ndustrial chemicals . . . [and] petroleum products" are examples of hazardous substances. 567 I.A.C. 131.1.
4. Therefore, the oil, hydraulic fluid, and antifreeze found pooled on the ground and in the soil at Mr. Passhel's property qualify as hazardous substances under the law, and their release into the environment created a hazardous condition.
5. The party "storing, handling, . . . or disposing of a hazardous substance" must notify the Department and local police department of the occurrence of a hazardous condition as soon as possible, but no later than six (6) hours after the onset of the hazardous condition or its discovery, and the failure to do so subjects the party to a civil penalty of \$1,000. *See* IOWA Code § 455B.386 and 567 I.A.C. 131.2.
6. Mr. Passehl has never notified the Department of the release of oil, hydraulic fluids, or antifreeze at his property. The oil spills at issue in the second, third, and fourth NOV's issued to Mr. Passehl, as well as the hydraulic fluid and antifreeze addressed in the fifth NOV, were either reported to the Department by a third party or were discovered by the Department upon a site inspection.

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7. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 I.A.C. 100 through 121.
8. 567 I.A.C. 117.3(1) prohibits the "land disposal of waste tires [unless it is] at a permitted sanitary landfill" To ensure that improper land disposal is not occurring,

"no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile" *Id.* at 117.4(1).
9. The four NOVs issued between 2003 and 2007 contained a violation of the waste tire stockpile permit provision.
10. 567 I.A.C. 118.2(1) prohibits any person from disposing or recycling an appliance until it has been properly demanufactured. A person cannot demanufacture an appliance without first obtaining an ADP from the Department. *Id.* at 118.2(2).
11. "Appliances" is defined to include "air-conditioning units . . . clothes washers, [and] clothes dryers," 567 I.A.C. 118.3.
12. The above-stated facts demonstrate noncompliance with this provision as Mr. Passehl has had, since at least 2003, numerous appliances deposited in his salvage yard – to include air conditioners, washers, and dryers – without the authorization of an ADP.
13. Iowa Code chapter 455B, Division III, Part I (sections 455B.171 - 455B.198) establishes the Water Quality program. Section 455B.177 declares that it is in the interest of the people of Iowa to implement the Clean Water Act and its accompanying federal regulations and guidelines – which include the issuance of permits regulating the discharge of pollutants into waters of the State.
14. Iowa Code section 455B.173 provides that the Commission shall develop comprehensive plans and programs for the prevention, control, and abatement of water pollution. The Commission has adopted such rules at 567 I.A.C. chapters 60-69 relating to water quality.
15. 567 I.A.C. 64.3 prohibits a person from operating any wastewater disposal system or part thereof in "contrary to any condition of an operation permit issued by the director."
16. Part III-C of the NPDES General Permit No. 1 issued to Mr. Passehl by the Department requires the creation of a "storm water pollution prevent plan" (PPP). The PPP is required to be "completed before the Notice of Intent is submitted to the Department," which occurred in this case in April 2004. *Id.* at Part III-C(1). Additionally, the "owner or operator of a facility with a storm water discharge . . . permit shall make plans available upon request by the Department." *Id.* at Part III-C(2)"b".

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17. The above-stated facts set out Mr. Passehl's noncompliance with his permit. After receiving his NPDES permit in April 2004, it took Mr. Passehl four years to complete his PPP.

V. ORDER

THEREFORE, the Department hereby orders and Mr. Passehl agrees to the following:

1. Mr. Passehl shall evacuate any and all remaining contaminated soil around both car crushers and dispose of it in a sanitary landfill; Mr. Passehl shall submit disposal receipts proving he has done so within 30 days of this Order.
2. Mr. Passehl shall properly dispose of all discarded appliances at his property at an approved landfill or recycling center, and submit receipts to the Department within 30 days of this Order to prove he has done so. Additionally, Mr. Passehl shall not accept any appliances in the future unless he obtains an ADP.
3. Mr. Passehl shall ensure that he does not have more than 500 passenger tire equivalents on his property unless he obtains a waste tire stockpile permit. In the future, Mr. Passehl shall maintain separate tire piles for "waste tires" and "used" tires for ease of volume assessment, organizing his current tire inventory in this manner to the maximum extent practical.
4. Mr. Passehl shall pay an administrative penalty of \$3,000 to the order of the Iowa Department of Natural Resources within 60 days after issuance of this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 455B.307 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of noncompliance for the water quality violations and illegal solid waste disposal involved in this matter. More serious criminal sanctions are also available pursuant to those provisions.
2. Iowa Code sections 455B.175, 455B.307, and 455B.109 authorize the enforcement of water quality standards and solid waste compliance through the issuance of an administrative order and an accompanying penalty up to \$10,000. The Commission established procedures and criteria for the assessment of administrative penalties in 567 I.A.C. Chapter 10. Pursuant to those rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Consent Order with a penalty.

ECONOMIC BENEFIT: Mr. Passehl's economic benefit for not complying with Department rules is based upon the following considerations: the costs saved by avoiding labor, hauling, and tipping fee costs associated with proper disposal of contaminated soil, tires, and

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appliances; the costs saved by not conducting annual storm water monitoring and reporting as required by his permit; and the money saved by not obtaining an ADP – which requires the applicant to complete demanufacturing training at personal expense. As such, \$500 is assessed for this factor.

GRAVITY: Significant environment impact occurred at Mr. Passehl's property due to the release of hazardous substances on a fairly regular basis: the facts show that oil pools were present at every Department site inspection between 2004 and 2007. Most recently, pools of hydraulic fluid and antifreeze were also present on the ground. This resulted in contaminated soil, potentially contaminated groundwater, and the death of vegetation in the area. Accordingly, \$500 is assessed for this factor.

CULPABILITY: Mr. Passehl has a well-documented four-year history of violations. Mr. Passehl has been made aware of all applicable Department rules since 2003 through Department staff site visits, letters, and NOV's. It is irrefutable that Mr. Passehl has been repeatedly informed of the violations at hand, the remedy required, and the time frame in which to comply; his ongoing noncompliance is willful. Therefore, \$1,000 is assessed for this factor.

HAZARDOUS CONDITION: Iowa Code section 455B.396 and 567 I.A.C. 10.2(4) authorizes the administrative assessment of a \$1,000 penalty for the failure to comply with hazardous condition notification requirements.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.178, 455B.308, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the director or the Commission. This Order is entered into knowingly by and with the consent of Mr. Passehl. By signing this Order all rights to appeal this Order are waived.


VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307.

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JERRY PASSEHL

Dated this 5 day of Dec, 2008


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of Jan, 2009

Jerry Passehl: Field Office 2; Jeff Vansteenburgh; Dennis Ostwinkle; Dan Stipe; David Hopper;
Michelle Johnson; I.B(1)(a); I.C(7)(b); IV.A; VI.C